



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *JJ v Canada Employment Insurance Commission*, 2019 SST 1748

Tribunal File Number: GE-19-1242

BETWEEN:

**J. J.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Gary Conrad

HEARD ON: May 14, 2019

DATE OF DECISION: May 28, 2019

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The claimant filed an initial claim for Employment Insurance (EI) benefits and requested an antedate of his initial claim. After reviewing his antedate request the Canada Employment Insurance Commission (Commission) determined that the claimant had not shown good cause throughout the entire period of the delay and denied his request for an antedate.

[3] The claimant requested a reconsideration of this decision. After reviewing their initial decision the Commission upheld their denial of the claimant's request for an antedate. The claimant appealed this decision of the Commission to the General Division of the Social Security Tribunal (Tribunal) and his appeal was summarily dismissed.

[4] The claimant appealed the summary dismissal to the Appeal Division of the Tribunal and the Appeal Division allowed the claimant's appeal having found that the General Division erred in law by summarily dismissing the appeal. The Appeal Division sent the matter back to the General Division for reconsideration and directed that the General Division hold an oral hearing.

## **ISSUE**

[5] Can the claimant's initial claim be antedated as requested?

## **ANALYSIS**

[6] An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the entire period beginning on the earlier day and ending on the day when the initial claim was made (subsection 10(4) of the *Employment Insurance Act* (Act)).

**Can the claimant's initial claim be antedated as requested?**

[7] No, the claimant's initial claim can be antedated as he did not demonstrate good cause for the entire period of the delay as he did not act as a reasonable and prudent person would have done in similar circumstances.

[8] To antedate an initial claim the claimant must show that he was qualified to receive the benefits on a date earlier than the application and must show that there was good cause for the delay in filing his application during the complete period of the delay, (*Bradford v. Canada Employment Insurance Commission* 2012 FCA 120).

[9] To demonstrate good cause requires the claimant to show that he acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay (*Canada (Attorney General) v. Burke* 2012 FCA 139). In the claimant's case from December 8, 2015, until December 21, 2017.

[10] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and obligations under the Act (*Canada (Attorney General) v. Kaler* 2011 FCA 266, *Canada (Attorney General) v. Innes* 2010 FCA 341).

[11] The burden of proof resides with the claimant (*Canada (Attorney General) v. Kaler* 2011 FCA 266).

[12] The Commission submits that the claimant would have qualified for EI benefits at the earlier date he is requesting; however, he did not act as a reasonable person in his situation would have done to verify his rights and obligations under the Act.

[13] The Commission submits the claimant did not make any enquiries to the Commission in the whole two year period from when he left his employment to when he filed his application for benefits and there was nothing that prevented him from making said enquiries.

[14] The Commission submits that although the claimant states he does not know how to use a computer, he could have contacted the Commission regarding EI benefits by telephone or in person at a Service Canada Centre or he could have asked the assistance of his sister to research

any possible benefits through the internet. In addition, the claimant did apply for, and received, financial assistance from the provincial government due to his lack of work.

[15] The Commission submits that that the claimant stated that from the time he left his employment on December 8, 2015, he had three full days each week where he did not have to care for his parents, which gave him ample time to make enquiries about any possible benefits for his situation. He also confirmed that there was nothing which prevented him from making enquiries or filing an application for benefits.

[16] The Commission submits that the jurisprudence supports its decision. The Federal Court of Appeal in *Canada (Attorney General) v. Kaler*, 2011 FCA 266, has re-affirmed that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause. The correct legal test for good cause is whether the claimant acted as a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.

[17] The claimant testified that he left work on December 8, 2015, to look after his parents. After going back and forth day and night to his parent's home, he made arrangements to sell his home and move in with them permanently to make it easier to take care of them.

[18] The claimant testified that his parents both needed 24/7 care and that other than his sister taking care of his parents' bills, he acted to look after his parents doing whatever needed to be done such as cooking, cleaning, helping them to the bathroom, and maintenance around the house among other things.

[19] The claimant testified that the Commission misunderstood his homecare situation. The claimant testified that homecare did come on Monday, Wednesday, and Friday, but it was only for an hour maximum and it was just to help give his father a bath. On some days his father did not want a bath so homecare simply left.

[20] The claimant testified that while he did leave his home to apply for provincial assistance, he was aware of that assistance and his parents were still at the point where they could be home alone for a couple hours and be okay. The claimant testified that just in case he had his sister come and watch his parents while he was out completing the application.

[21] The claimant testified that the homecare worker told him about Compassionate Care benefits from EI in October 2017. The claimant testified that he did not apply for them immediately as he needed to look after his parents and arrange care for them so that he could go and apply. The claimant testified he got his brother to come and look after his parents and then he went in person to a Service Canada Center and got the necessary paperwork to apply for benefits. The claimant testified that while reading the paper work he noticed that he could apply online so he asked his sister to help him with doing so.

[22] The claimant testified that the only time he left the house with his parents was when he was taking them to a medical appointment, and even then, due to their conditions, it could not be for a long period of time.

[23] I find the claimant's initial claim for benefits cannot be antedated as requested as he failed to act as a reasonable and prudent person in similar circumstances would have throughout the entire period of the delay.

[24] I find the claimant did not present exceptional circumstances that would have prevented him from acting as a reasonable and prudent person and taking reasonably prompt steps to understand his entitlement to benefits and obligations under the Act.

[25] I rely on the claimant's testimony that his parents were able to be home alone for a couple hours when he went and applied for provincial benefits. I find that a reasonable and prudent person would have thus been able to take prompt steps to understand his entitlement to benefits and obligations under the Act as he was not unable to leave his home for the entirety of the time he was looking after his parents. I further find the claimant has not demonstrated he could not have called the Commission to understand his entitlement to benefits and obligations under the Act.

[26] I further rely on the fact the claimant could have asked his sister or his brother, as he testified he did on certain occasions, to look after his parents while he worked to understand his entitlement to benefits and obligations under the Act, either by attending a Service Canada Center in person or contacting the Commission on the phone.

[27] I find as per the claimant's testimony he became aware of the Compassionate Care benefits in October 2017, and yet did not apply until December 2017. I find that he did not act as a reasonable and prudent person would have in similar circumstances as a reasonable and prudent person would have immediately applied for benefits, rather than delaying their application.

[28] I find that the claimant has not presented sufficient evidence to support that he could not have contacted the Commission at the time he became aware of Compassionate Care Benefits, either through telephone or asking his sister to watch his parents while he went and applied in person. While he may not have been aware of the phone number to call, it is not clear that he could not have contacted his sister, or brother, to have them assist him in finding the contact information.

[29] I do not doubt the claimant was unaware of the benefits when he first left his employment and starting caring for his parents; however, even in consideration of that, by October 2017, he had been informed of said benefits and yet he did not apply until December 21, 2017. I further find that even though the claimant may have been unaware of benefits, ignorance of the law, in and of itself, does not represent good cause, (*Canada (Attorney General) v. Kaler*, 2011 FCA 266).

[30] I find that while both parts of the legal test must be considered in order to determine if the claimant's initial claim can be antedated, as I have found he does not meet the good cause part of the test, it is not necessary to consider whether he qualified at the earlier date.

## **CONCLUSION**

[31] The appeal is dismissed. I find that the claimant did not show good cause for the entire period of the delay, from December 8, 2015, to December 21, 2017, and as such his initial claim cannot be antedated as requested.

Gary Conrad  
Member, General Division - Employment Insurance Section

HEARD ON:	May 14, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. J., claimant